

## ***FWP COMMISSION AGENDA ITEM COVER SHEET***

**Meeting Date:** February 14, 2013

**Agenda Item:** Yellowstone River Temporary Closure

**Division:** Fisheries                      **Action Needed:** Propose Rule

**Time Needed on Agenda for this Presentation:** 15 minutes

### **Background**

On December 13, 2012 the FWP Commission, represented by Commissioner Dan Vermillion, adopted an emergency rule closing the Yellowstone River from Mayor's Landing FAS (river mile 495) downstream to Highway 89 Bridge FAS (river mile 489). The closure was necessary to address an imminent threat to public safety caused by river hydraulics present at a Montana Department of Transportation (MDT) bridge construction site at Park Street, near the town of Livingston. The force and direction of the water flowing around temporary work bridge piers created dangerous floating conditions. The emergency rule also closed the lands immediately adjacent to the construction site. By statute (2-4-303, MCA), an emergency rule may be in effect no longer than 120 days, which means that this particular rule will expire on April 12, 2013. The statute also states that an emergency rule with the same, or substantially the same text may not be adopted. MDT anticipates that conditions may continue to warrant a river closure beyond April 12. For this reason, FWP is recommending that the Commission propose an annual rule that would continue the closure beyond April 12 and give FWP, with approval from the local Commissioner, the authority to repeal the rule once conditions no longer present an undue hazard to public safety. FWP has modified the proposed closure so that it would terminate 1,000 feet below the construction site, which would allow people to float the river below that point, rather than having the closure in place all the way downstream to Highway 89 Bridge FAS. MDT's contractor has until midnight September 15 to complete the bridge construction. However, the MDT contract provisions stipulate that the contractor must provide safe public float passage, including a 40' effective opening between instream construction-related obstructions, and appropriate navigational signage and hazard posting. FWP will work with MDT to identify alternatives to the river closure and emphasize the necessity of providing safe public float passage, and that this will be vitally important after high-water when angling pressure increases.

### **Public Involvement Process & Results**

FWP would solicit public comments and report back to the Commission at its April meeting. This would include a public meeting in Livingston. FWP would issue news releases and notify interested parties.

### **Alternatives & Analysis**

The Commission could choose not to propose a rule closing the river. The emergency rule would expire on April 12. It is possible that conditions will have changed by then, resulting in safer conditions and negating the need for a closure.

### **Agency Recommendation & Rationale**

FWP recommends that the Commission propose the rule and initiate public involvement. The decision to close a river to floating is not a trivial decision. In this case FWP believes a closure is warranted due to the high risk associated with current conditions in the vicinity of the construction project.

### **Proposed Motion**

**"I move that the Commission propose an annual rule closing the Yellowstone River from Mayor's Landing fishing access site to 1,000 feet below the Park Street Bridge in Livingston."**